

James E. Magleby (7247)

magleby@mcg.law

Edgar Cataxinos (7162)

cataxinos@mcg.law

Geoffrey K. Biehn (13445)

biehn@mcg.law

Yevgen Kovalov (16297)

kovalov@mcg.law

MAGLEBY CATAXINOS & GREENWOOD, PC

170 South Main Street, Suite 1100

Salt Lake City, Utah 84101-3605

Telephone: 801.359.9000

Facsimile: 801.359.9011

Attorneys for Magleby Cataxinos & Greenwood, PC
(former attorneys for Plaintiff Vitamins Online, Inc.
and other clients)

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**VITAMINS ONLINE, INC., a Delaware
corporation,**

Plaintiff,

v.

**HEARTWISE, INC. an Oregon
corporation d/b/a NATUREWISE,**

Defendant.

NOTICE OF ATTORNEY'S LIEN

Case No.: 2:13-cv-00982-DAK

District Judge Dale A. Kimball

Honorable Jared C. Bennett

Notice is hereby given that the law firm of Magleby Cataxinos & Greenwood, PC ("MCG" or the "Firm"), 170 South Main Street, Suite 1100, Salt Lake City, Utah 84101, does hereby claim an attorney's lien, pursuant to Utah Code section 38-2-7, arising out

of an engagement agreement between MCG and the Plaintiff Vitamins Online, Inc.¹ (“Client” or “Vitamins Online”), entered on October 17, 2018 (the “Engagement Agreement”). [2018-09-27 Engagement Letter and 2018-10-17 Email from O. Khan to J. Magleby, collectively attached as Exhibit “1”].²

Lien

The attorney’s lien is for the balance of compensation due from the Client to MCG, for services in connection with the above-captioned matter. The balance owed to MCG consists of reasonable attorney fees connected with work performed for the Client. These fees are in two categories: i) unpaid, reduced hourly fees in the amount of \$144,748.61; and ii) a partial contingency fee calculated at no less than \$3,375,000.00.

The attorney’s lien may be – and is - placed upon and against any and all property held by the Client, whether jointly or separately, as allowed under Utah Code section 38-2-7(2), including without limitation the following:

1. Any real, personal, or intangible property that is the subject of or connected with the work performed for the Client, including without limitation any bond or other monies held by the Court in the above-captioned action, and any attorney’s fee awards to which the Client may be entitled in the above-captioned action.

¹ Additional clients identified in the Engagement Letter are NutriGold, Inc., Osman Khan, and Priya Khan.

² To protect potential attorney-client privilege and avoid the disclosure of confidential and non-public information contained in Exhibit 1, the first exhibit is attached only to the Notice of Attorney’s Lien sent to the Client and is not filed with the Court at this time.

2. Any funds held by the Firm for the Client, including any amounts paid as a retainer to the Firm by the Client.

3. Any settlement amount, fee award, verdict, report, decision, or judgment in the Client's favor in any matter or action in which MCG assisted, including any proceeds derived from the matter or action, whether or not the Firm is employed by the Client at the time the settlement, verdict, report, decision, or judgment is obtained.

4. Any and all proceeds derived from the above-captioned action, or any other matter in which MCG assisted, including without limitation any proceeds that may result from the Final Judgment entered by the Court or any disbursement and/or the attorney fee award entered or to be entered in the above-captioned action.

5. Pursuant to the scope of an attorney's lien under the statute, and the terms of the Engagement Agreement between Vitamins Online and MCG, the attorney's lien applies at a minimum to the following:

a. The Final Judgment entered on November 10, 2020 in the above-captioned action in favor of Vitamins Online and against Defendant HeartWise, Inc. in the amount of \$9,551,232 (the "Award"). [2020-11-10 Final Judgment, Dkt. 586].

b. The prejudgment interest at the rate of 2.13% per annum on the Award, as provided in the Final Judgment and, as of December 4, 2020, totaling \$1,395,740.32. [*Id.*; 2021-01-27 Vitamins Online Proof of Claim at 4, attached as Exhibit "2"].

c. Any subsequently awarded, collected, paid, or disbursed costs and reasonable attorney fees, which the Client has represented to total approximately \$3,480,000.00. [2021-01-27 Vitamins Online Proof of Claim at 5, Ex. 2].

d. The Client's claim for \$14,375,000.00 submitted in the case styled *In re HeartWise, Inc.*, pending in the United States Bankruptcy Court, Central District of California – Santa Ana Division, Case No. 8:20-bk-13335-MW (the "Bankruptcy Case"). [2021-03-20 Disclosure Statement

Describing HeartWise, Inc.'s Chapter 11 Plan of Reorganization, attached as Exhibit "3"].

e. Any disbursements and payments resulting from any awards, plans, distributions, orders, decisions, settlements, and/or agreements entered in the Bankruptcy Case.

Notice Pursuant to Utah Code § 38-2-7(6)

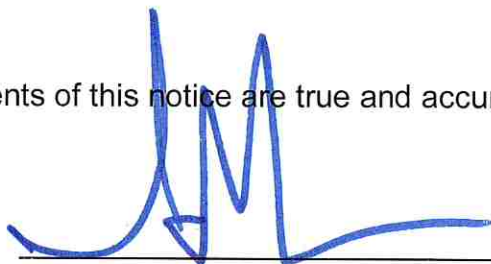
In accordance with Utah Code section 38-2-7(6), MCG provides the following information:

1. Attorney Claiming the Lien: The law firm of Magleby Cataxinos & Greenwood, PC, 170 South Main Street, Suite 1100, Salt Lake City Utah, 84101, telephone number: 801-359-9000.
2. Name of Clients Who Are the Owners of the Property Subject to the Lien: Vitamins Online, Inc., and possibly NutriGold, Inc., Osman Khan, and Priya Khan.
3. Verification: The undersigned verifies that: (i) the property is the subject of or connected with work performed by MCG for the Client; and (ii)(A) MCG made a demand for payment of the amounts owed to MCG for the work and the Client did not pay the amounts owed within 30 days after the day on which MCG made the demand; or (B) MCG is filing this notice of lien in accordance with a written agreement between MCG and the Client.
4. Date on Which MCG First Provided Legal Services to the Client: August 17, 2018.
5. Description of Property: All property set forth above, including all monies derived from any collections or execution upon any monetary awards, sanctions awards, or judgment obtained in the above-captioned matter, all monies derived from

any collections upon any attorney fee awards obtained in the above-captioned matter and the Bankruptcy Case, any and all monies paid to or received by the Client in partial or total settlement of the above-captioned matter, and any and all claims, payments, and disbursements Client receives or is entitled to receive from the Bankruptcy Case.

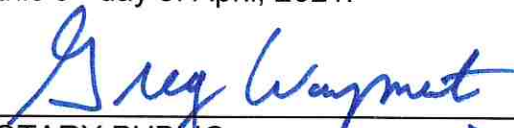
6. Through the date of this Notice, the Firm is owed reasonable attorney fees of no less than \$144,748.61 for hourly fees and \$3,375,000.00 as a partial contingency fee. Under Utah Code section 38-2-7(3), the attorney's lien relates back to the time of employment of MCG by the Client.

To the best of my knowledge, the contents of this notice are true and accurate.


James E. Magleby

On the 9th day of April, 2021, personally appeared before me James E. Magleby, who duly acknowledged to me that he is the signer of the above document, and that the foregoing is true and accurate to the best of his knowledge and belief.

SUBSCRIBED AND SWORN to before me this 9th day of April, 2021.


NOTARY PUBLIC
Residing at: Salt Lake City

My Commission Expires: 12/21/2021



CERTIFICATE OF SERVICE

I hereby certify that I am employed by the law firm of MAGLEBY CATAXINOS & GREENWOOD, PC, 170 South Main Street, Suite 1100, Salt Lake City, Utah 84101, and that pursuant to Rule 5(b), Federal Rules of Civil Procedure, a true and correct copy of the foregoing **NOTICE OF ATTORNEY'S LIEN** was delivered to the following by CM/ECF System, unless indicated otherwise, this 9th day of April 2021, by:

Scott Savage
ssavage@sywlaw.com
Stephen R. Waldron
swaldron@sywlaw.com
SAVAGE, YEATES & WALDRON, PC
2455 E. Parleys Way, Suite 200
Salt Lake City, Utah 84109
Attorneys for Defendant Heartwise

R. Joseph Trojan (pro hac vice)
trojan@trojanlawoffices.com
Francis Wong (pro hac vice)
wong@trojanlawoffices.com
Dylan C. Dang (pro hac vice)
dang@trojanlawoffices.com
Kevin R. Davis (pro hac vice)
davis@trojanlawoffices.com
TROJAN LAW OFFICES
9250 Wilshire Blvd., Suite 325
Beverly Hills, California 90212
Attorneys for Defendant Heartwise

Osman Khan
osman@nutrigold.com
VITAMINS ONLINE, INC.
1467 West 105 North
Orem, UT 84057
(Certified & Electronic Mail)

Osman Khan
osman@nutrigold.com
1467 West 105 North
Orem, UT 84057
(Certified & Electronic Mail)

Peggy Hunt
huntp@gtlaw.com
Sarah E. Goldberg
goldbergsa@gtlaw.com
GREENBERG TRAUIG, LLP
222 South Main Street, 5th Floor
Salt Lake City, UT 84101
Attorneys for Defendant Heartwise

Chad E. Nydegger
cnydegger@wnlaw.com
David R. Todd
dtodd@wnlaw.com
WORKMAN NYDEGGER
60 East South Temple
Suite 1000, Salt Lake City, Ut 84111
Attorneys for Plaintiff Vitamins Online

Osman Khan
osman@nutrigold.com
NUTRIGOLD, INC.
1467 West 105 North
Orem, UT 84057
(Certified & Electronic Mail)

Priya Khan
priya@nutrigold.com
1467 West 105 North
Orem, UT 84057
(Certified & Electronic Mail)

/s/ H. Evan Gibson
